

AFFIDAVIT

In Re Application of: **BLAIR, et al.**
Int. Appln. No.: **PCT/GB02/03532**
Int. Filing Date: **31 July 2001**
Title: **Telecommunication Interaction Analysis**
Atty Docket No.: **762301-1290**

I, Kevin Hegebarth, a citizen of the United States with an address of 145 Millwick Cove, Alpharetta, Georgia 30005, being duly sworn, do swear as follows:

- 1) I am over 21 years of age and under no mental infirmity.
- 2) I am the director of strategic analysis at Witness Systems, Inc. ("Witness"), 300 Colonial Center Parkway, Suite 600, Roswell, GA 30076, which owns the above PCT patent application.
- 3) The above PCT patent application was originally owned by Eytel PLC ("Eytel"), Kings Court, Kingston Road, Leatherhead, Surrey KT22 7SZ, United Kingdom.
- 4) In March 2003, Witness acquired Eytel including the above PCT patent application. David Gill, a patent attorney with the firm of W.P. Thompson & Co., 55 Drury Lane, London WC2B 5SQ, assisted in managing and handling Eytel's patent applications before the acquisition.
- 5) The above PCT patent application was not filed in the U.S. on or before February 2, 2004, which is the 30-month National Phase filing deadline for the above PCT patent application.
- 6) Between 2003-2004, I had many responsibilities that involved the acquisition of Eytel: 1) functional integration of Eytel's and Witness' products; 2) marketing integration of Eytel's and Witness' brands; 3) partnering strategy with technology companies; and 4) management of Eytel's patent applications that were being transferred to Witness. Since I am not a patent attorney, the management of the Eytel's patent applications was not a high priority compared to my other responsibilities. In addition, the transfer of approximately 30 of Eytel's patents and patent applications was overwhelming and confusing. Since David Gill had been working with Eytel's patent applications, I continued to use David to help manage and handle Eytel's patent applications.
- 7) In 2005, Andrew Pham was obtained as Director of Intellectual Property for Witness. Andrew was working with David in managing the prosecution of the above PCT patent application. In January 2006, Andrew discovered that the above PCT patent application was not filed in the U.S. and requested an explanation from David.

8) According to David Gill, in February 2004, I expressed to David an interest in pursuing this patent application in the U.S. and requested a cost estimate. In March 2004, David provided me with an informal cost estimate in filing a petition to revive the application and requested confirmatory instructions from me. In July 2004, David indicated that this application had not been filed in the U.S. because I did not provide him with the confirmatory instructions.

9) The lapsing of the above PCT patent application was unintentional on my part due to the confusion that occurred when Witness acquired Eyretel and all of the Eyretel's patent applications were being transferred to Witness. In addition, I was overwhelmed with my responsibilities as director of strategic planning, and so the management of Eyretel's patent applications was not a high priority. Consequently and unfortunately, the filing of the above PCT patent application in the U.S. was overlooked on my behalf.

Date: 14 March 2006

By: Kevin G. Hegebarth
Kevin G. Hegebarth

United States of America

State of Georgia

County of Fulton

On this 14th day of March, 2006, before me personally came Kevin G. Hegebarth to me known to be the individual described above and who executed the foregoing instrument, or acknowledged execution of the same.

Persephone C. Keller
Notary Public

10/10/06

My Commission Expires (Date)



PERSEPHONE C. KELLER
Notary Public, Gwinnett County, Georgia
Commission Expires Oct 10, 2006